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REDACTED VERSION: March 12, 2007
March 5, 2007

VIA ELECTRONIC FILING

The Honorable Gregory M. Sleet
United States District Court
844 North King Street
Lock Box 19
Wilmington, DE 19801

REDACTED VERSION DI 229

RE: Talecris Biotherapeutics, Inc. & Bayer Healthcare LLC v. Baxter International, Inc. and Baxter Healthcare Corp., C.A. No. 05-349-GMS

Dear Judge Sleet:

We write in response to Defendants' March 2, 2007 letter. Defendants' effort to belatedly inject inequitable conduct issues into this case is unaided by Cargill, Inc. v. Canbra Foods, Ltd., ___ F3d ___, 2007 U.S. App. LEXIS 3222 (Fed. Cir. Feb. 14, 2007). First, Cargill does not excuse Defendants' inexplicable delay in proffering an amendment six months after the Scheduling Order deadline.

Second, Defendants' March 2, 2007 letter extends the fatal flaw in the proposed amendment because it accuses "Bayer" of misconduct and not any named individual. The controlling law, however, requires that inequitable conduct be pled with specificity (Fed. R. Civ. P. 9(b)) and that the pleading sets forth which "individual" is accused of which improper conduct (37 C.F.R. §1.56). Defendants have not done this, as their current submission confirms.

Third, while Cargill demonstrates the futility of the proposed amendment, it also does nothing to overcome Defendants' abject failure to establish "good cause",

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We refer the Court to our pending motion for disqualification for a detailed discussion. See D.I. 76, D.I. 107.

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For these reasons and as set forth in our Brief in Opposition (D.I. 176) supported by our motion to disqualify (D.I. 76), Cargill is inapposite and does not alter the unexcused delay and futility of the proposed amendment.

Respectfully submitted,

/s/ Jeffrey B. Bove

JBB/llw

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